

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CARL CHESTER,

Defendant.

2:06-cr-00309-RCJ-PAL

ORDER

Pending before the Court is Defendant's Motion for Certificate of Appealability. (ECF No. 297). This is the second such motion that Defendant has filed in this case, (*see* ECF No. 264), the first having been previously denied by the Court, (*see* Oct. 3, 2014 Order, ECF No. 281). Therefore, the Court interprets the instant Motion as a request that the Court reconsider its previous ruling.

In December 2007, a jury convicted Defendant on three counts of possession of a controlled substance with intent to distribute. The Court sentenced Defendant to 264 months of imprisonment, to be followed by five years of supervised release. Defendant appealed, and the Court of Appeals affirmed in March 2009. Subsequently, Defendant successfully moved in state court to have a state criminal judgment against him amended. Defendant then filed a habeas corpus motion in this Court pursuant to 28 U.S.C. § 2255, arguing, *inter alia*, that he should be resentenced because the original sentencing was based on a career offender finding that could not

1 be supported in light of the correction to the state court judgment. In October 2011, the Court
2 granted the motion as to resentencing but denied the motion as to the claims of ineffective
3 assistance of counsel and prosecutorial misconduct. In March 2012, the Court resentenced
4 Defendant to 168 months of imprisonment, to be followed by five years of supervised release.
5 Defendant appealed, and the Court of Appeals affirmed in August 2013.

6 Defendant then filed a second § 2255 motion, which the Court denied due to Defendant's
7 failure to petition the Court of Appeals for permission to file a successive motion under § 2255.
8 Defendant filed a motion to reconsider, arguing that the § 2255 motion is not "second or
9 successive" under the statute if an amended judgment and sentencing has intervened since the
10 first motion was adjudicated. *See Wentzell v. Neven*, 674 F.3d 1124, 1127 (9th Cir. 2012).
11 Contemporaneously, Defendant also filed his first motion for certificate of appealability. The
12 Court denied the motion to reconsider, finding that it was without merit, as well as the motion for
13 certificate of appealability. (Oct. 3, 2014 Order 2–4). Defendant now files what appears to be
14 either a motion for reconsideration or a renewed motion for certification.

15 To the extent that the pending Motion is a request for the Court to reconsider its prior
16 ruling, Defendant has failed to show any reason why reconsideration is warranted. There has
17 been no new evidence or change in law, and the decision was not in clear error or manifestly
18 unjust. *See Sch. Dist. No. 1J v. Acands, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993). As the Court
19 explained in detail, Defendant's "second" § 2255 motion was without merit. (*See* Oct. 3, 2014
20 Order 2–4). For those same reasons, the first motion for certificate of appealability was denied.
21 Generally, a certificate of appealability is proper only if the petitioner makes "a substantial
22 showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529
23 U.S. 473, 483–84 (2000). Where the district court has already rejected the petitioner's
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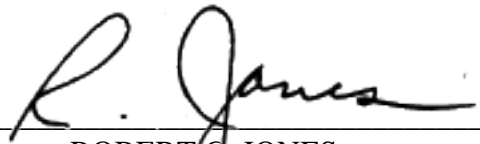
1 constitutional claims on the merits, “[t]he petitioner must demonstrate that reasonable jurists
2 would find the district court’s assessment of the constitutional claims debatable or wrong.”
3 *Slack*, 529 U.S. at 484. Defendant has not made such a showing. The Court finds that based on
4 the reasons contained in its previous order, (ECF No. 281), no reasonable jurist could conclude
5 that this Court acted in error by denying Defendant’s second § 2255 motion. Defendant is not
6 entitled to a certificate of appealability.

7 **CONCLUSION**

8 IT IS HEREBY ORDERED that Defendant’s Motion for a Certificate of Appealability
9 (ECF No. 297) is DENIED.

10 IT IS SO ORDERED.

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12 Dated: _ June 29, 2015 _____

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15 ROBERT C. JONES
16 United States District Judge
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